Chase Manhattan Bank (National Association) v Central Provident Fund Board & Ors

HIGH COURT (SINGAPORE) - ORIGINATING SUMMONS NO 288 OF 1989
YONG PUNG HOW J
24 JULY 1989

Land Law - Mortgage - Moneys withdrawn from CPF member's CPF account - Statutory charge in favour of CPF Board - Mortgage in favour of CPF Board - Mortgage in favour of lending bank - Deed of postponement - Member attaining withdrawal age before becoming adjudicated bankrupt - Whether statutory charge still in force - Whether CPF mortgage still enforceable against the member - Central Provident Fund Act (Cap 36, 1988 Ed), ss 15(2), 21(1), (10), 22(e), 25 & 56 - Central Provident Fund (Approved Residential Properties Scheme) Regulations 1982, regs 20(1), (2) & (3)

The plaintiffs are mortgagees of a property which had been purchased with a loan made by the plaintiffs to one of two purchasers of the property (both purchasers holding the property as tenants in common). The purchasers had also created a statutory charge ('the charge') in favour of the first defendant under the CPF Act (Cap 121, 1970 Ed) as they had withdrawn moneys from the Central Provident Fund ('the Fund'). The purchasers also executed a mortgage in favour of the first defendant ('the CPF mortgage'). The CPF mortgage was executed under the Land Titles (Strata) Act (Cap 158, 1988 Ed) in a standard form; attached to it is a memorandum of mortgage which contains the provisions which are deemed to be incorporated in any instrument in which the Board is named as mortgagee. Clause 2 of the memorandum reads as follows:

> The moneys secured by the mortgagee shall forthwith become due and payable to the Board on the occurrence of any of the following events: ... (d) if the member is adjudicated a bankrupt; ...

Clause 5 reads as follows:

> Provided none of the events specified in clause 2 hereof shall have earlier occurred, the moneys secured by the mortgage shall cease to be repayable to the Board ... (b) as and when the member ... would have become entitled to withdraw from the member's CPF Savings Account with the board ... an amount not less than the aggregate of the sums withdrawn therefrom under the said scheme ...

By a deed of postponement registered in the Land Titles Registry, it was agreed by all parties that the statutory charge and the CPF mortgage in favour of the first defendant should rank in priority to the plaintiffs' mortgage.

The purchaser (to whom the loan was made) attained the age of 55 years and later was adjudged a bankrupt. An agreement was reached to sell the property but this left $148,945.62 owing to the plaintiffs. The plaintiffs made a formal application for the charge to be cancelled but the first defendant not having taken any action to do so, the plaintiffs sought a declaration that the charge ceased to be in force by operation of law, and directions from the court as to the distribution of the remaining proceeds of sale of the property. The plaintiffs claimed that when the purchaser reached the age of 55 years, he became entitled to withdraw from the fund any sum standing to his credit in the fund. Since he was so entitled, all moneys withdrawn by him from the fund also ceased to be payable by him to the fund. Accordingly, since this was so, the charge lapsed by virtue of s 21(10) of the CPF Act (Cap 36, 1988 Ed) ('the Act'). The CPF mortgage was inextricably linked by cl 5 of the memorandum of mortgage to the corresponding provisions of the Act.

The first defendant claimed that the Act had given the CPF Board ('the Board') considerable discretion in the exercise of its functions to protect the rights of members. The Board had to be satisfied that certain conditions had been met before it could authorize a withdrawal by a member of the sum standing to his credit. An undischarged bankrupt was not entitled to make withdrawals although the Board could allow withdrawals. The charge did not lapse automatically nor were the plaintiffs entitled to have the charge cancelled. As any inconsistency in subsidiary legislation could not override the plain words of the Act, the provision that moneys withdrawn by a member 'shall cease' to be repayable to the Board on his being adjudged a bankrupt should be interpreted to mean that they 'shall be liable to cease'.

Held, allowing the plaintiffs' application and granting the declaration sought:

(1) There were two issues to be determined: (a) whether the charge created was still in force having regard to the fact that the member had attained the age of 55 years; and (b) whether on a true construction of the CPF mortgage, read with the Act, the CPF mortgage was still enforceable against the member and the persons claiming under him.

(2) The second contingency set out in s 21(10) of the Act, the fulfilment of which affects the continuation of a statutory charge, would apply where all the moneys secured by the charge are no longer required by the regulations made under s 56 to be repaid to the fund. Regulation 20 is such a regulation. By para 3 of this regulation, all moneys cease to be repayable to the Board when the member is entitled to withdraw the sums standing to his credit under s 15 of the Act. By s 15(2)(a) of the Act, a member is so entitled when he has attained the age of 55 years.

(3) The provision in para 1(d) of reg 20 for moneys withdrawn by a member to become due and payable to the Board if he is adjudged a bankrupt must, on a proper construction, be restricted to the cases where a member is adjudged a bankrupt before he attains the age of 55 years.

(4) On the purchaser reaching 55 years, the moneys secured by the statutory charge were no longer required to be repaid to the Board, and as there was nothing to be secured, the charge should no longer continue to be in force.

(5) Section 25 taken on its own would appear to specifically curtail the rights of members who are undischarged bankrupts. The Act must be read as a whole, however, and a construction made of all the parts together. Section 25 must be restricted in scope to members who become undischarged bankrupts before they attain the age of 55 years.

(6) There was no requirement for an application for a statutory charge to be cancelled where all the moneys withdrawn from a member's account were no longer required to be repaid. The charge which came into force by operation of law must cease to continue in force by operation of law.

(7) The CPF mortgage was linked to the charge created under the Act and should be considered together with it. The effect of cl 5 of the memorandum of mortgage is to bring the provisions of the CPF mortgage in line with the provisions of s 21(10) and reg 20(3), and to result in the moneys secured by the

CPF mortgage ceasing to be repayable to the first defendant on the member attaining the age of 55 years.

(8) Accordingly, on the purchaser attaining the age of 55 years, the charge and the CPF mortgage ceased to be enforceable.

Case referred to

1 *Attorney General of New Zealand* v *Ortiz & Ors* [1982] 3 All ER 432 (refd)

Legislation referred to

Central Provident Fund Act (Cap 36, 1988 Ed) ss 15(2), 21(1), (10), 22(e), 25, 56

Central Provident Fund (Approved Residential Properties Scheme) Regulations 1982 regs 20(1), (2), (3)

Low Chai Chong for the plaintiffs.
Jacqueline Chong (Miss) for the first defendant.

Cur Adv Vult

Yong Pung How J: By an agreement dated 22 February 1984, Lim Tek Pin and Ng Lai Keng ['the purchasers'] agreed to purchase a property known as 30B, Sims Avenue East, #03-01, Deng Fu Court, Singapore 1441. On 30 May 1985 the property was registered in their names as tenants in common in equal shares. Before that, a legal mortgage over the property dated 8 May 1985 was executed by them in favour of the plaintiffs to secure the principal sum of $210,000 lent by the plaintiffs to Lim Tek Pin. The purchasers also having withdrawn moneys from the Central Provident Fund ('the Fund') on 22 May 1985, a statutory charge under s 14 of the Central Provident Fund Act (Cap 121, 1970 Ed) was created in favour of the first defendant and was notified in the Land Titles Registry. On the same day, the purchasers also created a mortgage ('the CPF mortgage') in favour of the first defendant. By a deed of postponement registered in the Land Titles Registry on the same day, it was agreed by all the parties that the statutory charge and the CPF mortgage in favour of the first defendant dated 22 May 1985 should both rank in priority over the plaintiffs' mortgage.

Lim Tek Pin attained the age of 55 years on 10 November 1986 and was adjudged a bankrupt on 4 March 1988. Agreement has been reached to sell the property for $370,000. As of 23 March 1989 the total of all moneys withdrawn by Lim Tek Pin from the first defendant amounted to $230,026 and accrued interest thereon amounted to $52,796.50. As of 10 March 1988, the amount owing to the plaintiffs amounted to $148,945.62.

The plaintiffs' case is that when Lim Tek Pin attained the age of 55 years on 10 November 1986 he became entitled under s 15 of the Central Provident Fund Act (Cap 36, 1988 Ed) ('the Act') to withdraw from the fund any sum standing to his credit in the fund. Then, since he was so entitled, under reg 20(3) of the Central Provident Fund (Approved Residential Properties Scheme) Regulations 1982, all moneys withdrawn by him from the fund also ceased to be payable by him to the fund. Accordingly, since moneys secured by the statutory charge ceased to be payable by him, the statutory charge lapsed by virtue of s 21(10) of the Act. The CPF mortgage was inextricably linked by cl 5 of the memorandum of mortgage to the corresponding provisions of the Act.

The plaintiffs having made a formal application on 7 May 1988 for the statutory charge to be cancelled, and the first defendant not having taken any action to do so, the plaintiffs sought a declaration that the statutory charge ceased to be in force by operation of law, and directions from the court as to the distribution of the remaining proceeds of sale. If the plaintiffs' application should succeed, the second, third and fourth defendants who have lodged caveats over the property would be entitled to the balance of the proceeds of sale, but they had not been served with the originating summons.

The first defendant's case is that a statutory charge does not lapse automatically, neither are the plaintiffs entitled to have the charge cancelled. The fund was set up for a special purpose. The rights of members of the fund have been given specific protection. To ensure this, the Act has given the Central Provident Fund Board ('the Board') considerable discretion in the exercise of its functions. Under ss 15 and 20, the Board has to be satisfied that certain conditions have been met before it can authorize a withdrawal by a member of the sum standing to his credit in the fund. Under s 23, the member's contributions and any withdrawals made by him are protected from being attached for any debt or claim. More specifically, by s 25, an undischarged bankrupt is not entitled to make withdrawals, although the Board may exercise a discretion to allow withdrawals if the member satisfies certain conditions, and, even so, the approval of the minister is required for the withdrawal of the total amount outstanding to his credit. As any inconsistency in subsidiary legislation cannot override the plain words of the Act, the provision that moneys withdrawn by a member 'shall cease' to be repayable to the Board on his being adjudged a bankrupt should be interpreted to mean that they 'shall be liable to cease': *Attorney General of New Zealand* v *Ortiz & Ors*.[1]

On the facts of this case, there were two issues to be determined:

1) whether the statutory charge created by s 21(1) [s 14 of the 1970 CPF Act] is still in force having regard to the fact that the member has attained the age of 55 years; and
2) whether, on a true construction of the CPF mortgage, read with the Act, the CPF mortgage is still enforceable against the member and persons claiming under him.

By the deed of postponement both the statutory charge and the CPF mortgage rank in priority over the plaintiffs' mortgage.

On the first issue, the plaintiffs rely on the provisions of ss 15, 21(1) and 21(10) and reg 20(3) of the CPF (Approved Residential Properties Scheme) Regulations. Section 21(1) reads as follows:

> Where in accordance with any regulations made under section 56, a member of the Fund has on or after 1 June 1981 withdrawn any money standing to his credit in the Fund for all or any of the following purposes:
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> (a) to make payment, either full or partial, towards the purchase of an immovable property;
> (b) to repay or to make periodic payments towards the repayment of any loan taken by the member to finance or re-finance the purchase of an immovable property;
> (c) to pay any costs, fees or other expenses incurred -
> (i) for the purchase of an immovable property;
> (ii) for obtaining a loan to finance or re-finance such purchase; and
> (iii) in connection with withdrawals of any money from the Fund,
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> there shall be a charge on the member's estate or interest in the immovable property to secure the repayment of the money withdrawn from the Fund including the interest that would have accrued thereto if the withdrawal had not been made and to secure the repayment of the minimum sum into the member's retirement account; and where the immovable property is purchased or owned by the member as a co-purchaser, joint tenant or tenant in common, as the case may be, with one or more persons, the charge shall with the prior written consent of all the co-purchasers or co-owners extend to all their respective estates or interest in the immovable property.

Section 21(10) reads as follows:

> A charge under subsection (1) shall continue in force until all the moneys secured by the charge have been repaid or are no longer required by regulations made under section 56 to be repaid to the Fund or if the Board is satisfied of the occurrence of any of the events mentioned in section 22(e) in which event the member concerned or any other party having an interest in the immovable property shall be entitled to have the charge cancelled.

Regulation 20, which is such a regulation, reads as follows:

> (1) Subject to paragraph (2) all moneys withdrawn by a member under these Regulations together with any interest which would have accrued thereto if the withdrawal had not been made shall become due and payable to the Board on the occurrence of any of the following events:
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> (a) if the residential property or any interest therein is sold, transferred, assigned or otherwise disposed of by the member without the consent of the Board;
> (b) if the residential property or any interest therein is sold, transferred, assigned or otherwise disposed of by any mortgagee or by any other person with or without the consent of the Board;
> (c) if any mortgage or encumbrance is created over the residential property without the consent of the Board;
> (d) if the member is adjudged a bankrupt;
> (e) if the member has committed a breach of any of the terms and conditions imposed by the Board in connection with the withdrawal of moneys under these Regulations;
> (f) if the residential property or any estate or interest therein is acquired under the Land Acquisition Act or any other written law.
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> (2) Upon the happening of any of the events mentioned in paragraph (1)(b) or (f), the member shall only be required to repay to the Board the net proceeds arising from the sale or other disposition of the residential property by the mortgagee or by any other person, or the amount of any compensation received by the member under the Land Acquisition Act or under any other written law, as the case may be.
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> (3) All such moneys and interest referred to in paragraph (1) shall cease to be payable to the Board on the death of the member or when the member is entitled to withdraw the sum standing to his credit in the Fund under section 15 of the Act.

Section 15(2) reads as follows:

> Subject to this section, a member of the Fund, or a committee of his person or of his estate appointed under the provisions of the Mental Disorders and Treatment Act, shall be entitled to withdraw the sum standing to the credit of the member in the Fund at any time after the Board is satisfied that that member -
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> (a) has attained the age of 55 years;
> (b) not being a citizen of Singapore, has left or is about to leave Singapore and the State of Malaya permanently with no intention to return thereto;
> (c) being a citizen of Malaysia has left or is about to leave Singapore permanently for the States of Malaya in such circumstances as the Minister may approve;
> (d) is physically or mentally incapacitated from ever continuing in any employment at any time before he attains the age of 55 years; or
> (e) is found to be of unsound mind at any time before he attains the age of 55 years.

In mid-1985, Lim Tek Pin had withdrawn moneys standing to his credit in the fund under s 21(1) for a purpose provided for in that section and thereupon a statutory charge had been created. The statutory charge would continue in force until one of the contingencies under s 21(10) had been fulfilled.

It will be noted that s 21(10) sets out three contingencies, on the fulfilment of any of which the continuation of the statutory charge may be affected. The first contingency needs no discussion: if all moneys secured by the charge have been repaid there cannot be any further reason for the charge to continue in force. It is the second contingency which the plaintiffs contend has also been fulfilled and prevents the statutory charge from continuing in force, namely, that all moneys secured by the charge are no longer required by regulations made under section 56 to be repaid to the Fund. Regulation 20 is such a regulation made under s 56. Paragraph (1) of the regulation provides for moneys withdrawn from the fund to become due and payable to the Board on the occurrence of certain events, including the adjudication of the member as a

bankrupt. But, by para (3) of the regulation, all such moneys cease to be payable to the Board when the member is entitled to withdraw the sums standing to his credit in the Fund under s 15 of the Act, and, by s 15(2)(a) a member is so entitled when he has attained the age of 55 years.

In my opinion, the provision in para (1)(d) of the regulation for moneys withdrawn by a member to become due and payable to the Board if he is adjudged a bankrupt must, on a proper construction, be restricted to the cases where a member is adjudged a bankrupt before he attains the age of 55 years. In Lim Tek Pin's case, he attained the age of 55 years on 10 November 1986 at which time he immediately became entitled to withdraw the sums standing to his credit in the fund and this entitlement was not affected by his being adjudged a bankrupt later on 4 March 1988. On his attaining the age of 55 years, the moneys secured by the statutory charge were no longer required to be repaid to the fund under s 21(10); there was nothing to be secured and the statutory charge could therefore no longer continue to be in force.

In arguing against this construction, the first defendant's counsel referred to s 25 which reads as follows:

> 25(1) Subject to this section or any regulations made under section 56, a member who is an undischarged bankrupt shall not be entitled to make withdrawals from the amount standing to his credit in the Fund.
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> (2) The Board may in its discretion allow a member who is an undischarged bankrupt to withdraw from the amount standing to his credit in the Fund if he satisfies any of the grounds for withdrawals specified in section 15(2)(a), (d) or (e). Any moneys paid out of the Fund to that member shall be deemed not to form part of his after-acquired property and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever.
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> (3) Where withdrawals are made by a member who is an undischarged bankrupt under subsection (2), the Board may impose such conditions (including conditions as to the amounts that may be withdrawn by the undischarged bankrupt) as it may think fit.
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> (4) The Board shall not authorize the withdrawal of the total amount standing to the credit of a member who is an undischarged bankrupt under subsection (2) without the approval of the Minister.
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> (5) All applications for withdrawals under this section shall be in such form and shall be supported by such evidence as the Board may reasonably require.

Section 25 is a specific section which regulates the position of members who become bankrupt. In general, they are not entitled to make withdrawals from the Fund and, while the Board may allow a bankrupt member to make withdrawals on his attaining the age of 55 years, this is entirely in the discretion of the Board, and even this discretion may not be exercised for the withdrawal of the total amount standing to his credit without the approval of the Minister. Taken on its own, s 25 would appear to specifically curtail the rights of members who are undischarged bankrupts. The Act must be read as a whole, however, and a construction made of all the parts together. In my opinion, s 25 must be restricted in its scope to members who become undischarged bankrupts before they attain the age of 55 years: in that event, any moneys withdrawn by them become due and payable to the Board under reg 20(1)(d); and even after they attain the age of 55 years, their ability to make withdrawals is curtailed by s 25. Section 25, however, like reg 20, cannot be applied to affect the rights of a member who was not an undischarged bankrupt at the date when he attained the age of 55 years. Such a member was entitled under s 15 to withdraw his money from the fund; if he had withdrawn any money under s 21 for the purchase of immovable property there was no longer any need from that date for him to repay the money to the fund; and in the circumstances there was no longer any reason for the statutory charge to continue in force.

A further point which was argued before me was whether, in such circumstances, the statutory charge ceased by operation of law or whether it continues until it is cancelled. The wording of s 21(10) is not entirely satisfactory, and plaintiffs' counsel took pains to compare the meanings of the words 'until' and 'if' in the sentence, and to comment on the unsatisfactory syntax arising from the use of the latter to introduce the third contingency under that subsection. In my opinion, the third contingency relates to the occurrence of the events mentioned in s 22(e), and that section specifically requires an application to be made for a statutory charge to be cancelled. There is no such requirement in respect of the first two contingencies where all monies have been repaid, or are no longer required to be repaid. In such cases, the statutory charge which came into force by operation of law must cease to continue in force by operation of law.

In addition to the statutory charge, Lim Tek Pin and Ng Lai Keng also created on the same day, 22 May 1985, the CPF mortgage in favour of the first defendant, and by the deed of postponement it was agreed that this mortgage would also rank in priority over the plaintiffs' mortgage. This was the second issue and the question to be answered is whether, on a true construction of the mortgage read with the Act, the CPF mortgage is still enforceable against the member and persons claiming under him. The CPF mortgage was executed under the Land Titles (Strata) Act in a standard form; attached to it is a memorandum of mortgage which contains the provisions which are deemed to be incorporated in any instrument in which the Board is named as a mortgagee, and any such instrument has reference to this memorandum.

Clauses 2, 4 and 5 of the memorandum were referred to by counsel before me. Clause 2 reads as follows:

The moneys secured by the mortgage shall forthwith become due and payable to the Board on the occurrence of any of the following events:

(a) if the mortgaged property or any interest therein is sold transferred assigned or otherwise disposed of whether by the mortgagors or either of them or by whomsoever or in any circumstances whatsoever (with or without the consent of the Board) except any such leasing or letting of the mortgaged property or part thereof as permitted by the Board;

(b) if any mortgage, charge or encumbrance is created on the mortgaged property or any interest therein without the consent of the Board;

(c) if any mortgage charge or encumbrance is created on the mortgaged property or any interest therein with the Board's consent and the Board in giving the consent requires repayment of the moneys secured by the mortgage;

(d) if the member is adjudicated a bankrupt;

(e) if the mortgagors commit or threaten to commit a breach of any of the covenants undertakings stipulations terms and conditions or provisions contained herein or in the mortgage and on their part to be observed and performed and fail to remedy the same within seven (7) days after notice from the Board;

(f) if the moneys secured by the mortgage or any part thereof becomes immediately payable to the Board according to any provisions of the Central Provident Fund Act (Cap 121) or any statutory amendment thereto or modification or re-enactment thereof or according to any regulations made or from time to time made thereunder.

Clause 4 reads as follows:

Subject to the provisions of clause 5 hereof, the mortgage shall be a continuing security for all and every part of the moneys secured by the mortgage notwithstanding the death, insanity or bankruptcy of either of the mortgagors.

Clause 5 reads as follows:

Provided none of the events specified in clause 2 hereof shall have earlier occurred, the moneys secured by the mortgage shall cease to be repayable to the Board (a) in the event of the member or (b) as and when the member or a committee of his person or of his estate (appointed under the Mental Disorders and Treatment Act (Cap 162) or any statutory modification or re-enactment thereof) would have become entitled and would have been authorized by the Board in accordance with the provisions of section 11 of the Central Provident Fund Act (Cap 121) (or any statutory amendment to or modification or re-enactment of the said provisions) to withdraw from the Member's Central Provident Savings Account with the Board (hereinafter called 'the said account') an amount not less than the aggregate of the sums withdrawn therefrom under the said scheme and secured by the mortgage in terms of the mortgage if the said sums had not been so withdrawn under the said scheme.

The CPF mortgage was linked to the statutory charge created under the Act and should be considered together with it. The effect of cl 5 of the memorandum of mortgage is to bring the provisions of the mortgage in line with the provisions of s 21(10) and reg 20(3) and to result in the moneys secured by the mortgage ceasing to be repayable to the first defendant on the member attaining the age of 55 years.

In this context, s 11 of the CPF Act referred to was renumbered as s 12 in the revised edition of the CPF Act (Cap 121), and was renumbered again as s 15 of the CPF Act (Cap 36, 1988 Ed).

It is significant that cl 5 is prefaced by a proviso that none of the events specified in cl 2 shall have earlier occurred. This clearly means, in relation to the question of bankruptcy, that, unless the member was adjudged a bankrupt before attaining the age of 55 years under the then s 11, the moneys secured by the mortgage ceased to be repayable to the first defendant on the member attaining that age.

Accordingly, I find that, on the member attaining the age of 55 years, the statutory charge and the CPF mortgage ceased to be enforceable. I will hear counsel on costs on a date to be fixed.

Declaration granted.

Solicitors: *Rodyk & Davidson*; *Aileen Chong & Co.*

Reported by *Terence Tan Bian Chye*